IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12223 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHEBOOBMIYA NABIMIYA MALEK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12223 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/03/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged his detention order dated 9.11.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM" for short).

#. Along with the detention order, the detenu was also served with the grounds of detention. In the grounds of detention, there is a mention about black marketing activities of the petitioner. It is found that the petitioner indulged in black marketing in the matter of dealing with the fair price shop, for which, he has been given authorisation by the State Government. It is alleged against the petitioner that the petitioner has wrongly prepared some bills showing that he has distributed kerosene to 49 card holders, and, ultimately, it was found that the said card holders have not received the said quantity. It is also found that there is a deficit in selling rice to an extent of 567 kg and wheat to an extent of 457 kg, which he was required to distribute under the Mid-day Meal Scheme. After considering the material on record, the detention order is passed against the petitioner. The said detention order is challenged by way of this petition.

#. At the time of hearing of this petition, it is submitted by Mr.Prajapati that the representation was made to the Chief Minister on 11.12.2002, which is at page 33. It is submitted that the said representation is not decided and the detenu has not received any intimation about the disposal of the said representation. In order to substantiate his say that the said representation is received by the State Government, acknowledgment receipt is produced at page 60 in the compilation. It is submitted that the order of detention is required to be set aside on the ground of not deciding the representation.

#. After taking instructions, Mr.Pancholi, learned AGP, submitted that, an affidavit-in-reply is filed by the Civil Supplies Department, which is at page 61 in the compilation. In para 5, it is stated that the department has not received any representation, and, therefore, naturally, there was no occasion for the department to decide the said representation. Last time, the matter was adjourned in order to ascertain, whether the office of the Chief Minister has received the said representation or not. Mr.Pancholi, however, submitted

that it is not possible to ascertain from the office of the Chief Minister, whether any such representation is received or not. He submitted that, as per the practice, after the office of the Chief Minister receives such representation, the same is required to be sent to the concerned department. It is submitted that the said representation is lost either in transit or in the office of the Chief Minister. In any case, no explanation is coming forth in this behalf and even though sufficient time was given to the learned AGP to find out the said aspect, even after taking the instruction, the learned AGP is not in a position to state as to what has happened to the said representation, or, whether the said representation is received by the office of the Chief Minister or not. It seems that the said representation is lost in between. The learned AGP is not in a position to dislodge this averment in the petition, by which, it is stated by the petitioner that the said representation was sent to the office of the Chief Minister by way of Registered Post A.D., especially, when there is acknowledgment receipt in this behalf.

#. Under these circumstances, the detention order is required to be quashed and set aside on the ground that the representation of the petitioner, which is at page 33 in the compilation, is not decided by the department.

#. In view of what is stated above, the petition is allowed. The order of detention dated 9.11.2002 is quashed and set aside. The detenu Maheboobmiya Nabimiya Malek is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

#. Before parting with this order, it is clarified that, as per the policy of the State Government, as highlighted by Mr.Pancholi, learned AGP, when a person, in charge of the fair price shop, is detained under the provisions of the PBM, as a matter of course, the licence is required to be cancelled. He stated that the licence of the fair price shop of the petitioner will be accordingly cancelled in view of the said provisions, and, prompt action will be taken in this behalf, so that, the activities of the petitioner, which are highlighted in the detention order can be curbed for all time to come and he can be prevented from carrying on such illegal activities.

(P.B.Majmudar,J)

(pathan)